

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LAURA DAVIS and EDWARD DABROWSKI
as parents of a disabled student, C.D.
Plaintiffs,
-against-

ATTORNEY AFFIRMATION

Civil Action 7:08 CV 0445

CARMEL CENTRAL SCHOOL DISTRICT

Defendant.

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State of New York}
County of Ulster } ss.:

ROSALEE CHARPENTIER, an attorney duly admitted to practice in this Court and the attorney of record in this case, does hereby affirm under penalty of perjury the following statement to be true:

1. I represented the parents in the administrative proceedings underlying the instant complaint and therefore I am fully familiar with the facts and circumstances in this matter. I submit this affirmation to support Plaintiffs' motion for injunctive relief.

2. On August 23, 2006, Plaintiffs requested an impartial hearing on the claim which is now pending before this Court. They exhausted administrative remedies and are aggrieved of the findings and conclusions of a NYS administrative review officer, (SRO), see SRO Decision dated November 14, 2007, **No. 07-114**. On January 17, 2008, Plaintiffs appealed that SRO decision to this federal district court.

2. Pursuant to federal and State law, Plaintiffs are entitled to funding for their daughter's school placement beginning on August 23, 2006 when they formally requested administrative review and then continuing, uninterrupted, throughout the

pendency of all administrative and judicial proceedings. Specifically, the student was entitled to continue in her current educational placement at a special school for children with learning disabilities, the Kildonan School, Amenia, New York.

3. Defendant has violated, and continues to violate, Plaintiffs' right to important IDEA procedural safeguards, commonly referred to as the "pendency", "stay-put" or "status quo" provision. Defendant's ongoing violation of this provision has caused, and continues to cause, harm to the student's educational stability.

4. Plaintiffs' request for impartial hearing, on August 23, 2006, triggered the IDEA's requirement for pendency funding. Receipt of Plaintiffs' request for hearing prohibited the Defendant from imposing a change in the student's placement. Defendant was required to continue funding the student's then current placement, until all proceedings were completed and the issue resolved in their favor.

5. The student's current education placement, for purposes of the pendency provision, was the Kildonan School, a special school for students with dyslexia. In violation of the provision, the Defendant imposed a significant, illegal delay upon Plaintiffs in the arrangement of funding for the continued attendance at Kildonan. The Defendant violated its pendency obligations triggered by the August 23, 2006 request for hearing; tuition payments were not initiated for a full 5 months. It was not until January 31, 1007 that Defendant acquiesced to its responsibility for the student's current education. Defendant continued to make belated payments through the impartial hearing proceedings. On August 27, 2007, the hearing officer issued a decision for the parents. Thereafter, and during both the second tier of administrative review (i.e. the SRO review) and the instant federal court action, Defendant illegally

declined responsibility for continuing the student's placement at Kildonan. Defendant has violated, and continues to violate, the IDEA's pendency provision.

6. At all times since receiving Plaintiffs' August 23, 2006 request for impartial hearing, Defendant has been delinquent in its tuition payment obligations and, at the time this motion is filed, Defendant owes tuition payments to the Kildonan School for the student's current and continuing educational placement in the amount of \$29,367.50, see **Exhibit Q** filed here with Plaintiffs' affidavit.

7. Defendant's failure to make timely payments, and failure to acknowledge responsibility for such payments, violates federal and State law and seriously jeopardizes the student's educational stability.

WHEREFORE, PLAINTIFFS' RESPECTFULLY REQUEST THIS COURT GRANT THEIR MOTION FOR PRELIMINARY INJUNCTION AND ORDER DEFENDANT CARMEL CENTRAL SCHOOL DISTRICT FINANCIALLY RESPONSIBLE FOR THE STUDENT'S PLACEMENT AT THE KILONAN SCHOOL BEGINNING AUGUST 23, 2006 AND CONTINUING THROUGH ALL ADMINISTRATIVE AND JUDICIAL REVIEW.

Dated: June 2, 2008

RosaLee Charpentier, Esq.
Bar roll # RLC-2515
Family Advocates, Inc.
209 Clinton Avenue,
Kingston, NY 12401
Tel.: (845) 339-8080

To: Mark Rushfield, Attorney for Defendant Carmel Central School District